Helicopter Association International

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March 29, 2001

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington DC 20590-0001

Re: *HAI and ARSA Comment in Response to Notice of Proposed Rulemaking: "Airworthiness Directives," Docket No. FAA-2000-8460, Notice No. 00-15, 66 Fed. Reg. 3381 (January 12, 2001)*

Dear Madam Administrator:

Helicopter Association International (HAI) and the Aeronautical Repair Station Association (ARSA) submit this comment in response to the Notice of Proposed Rulemaking (NPRM) "Airworthiness Directives," Docket No. FAA-2000-8460, Notice No. 00-15, published on January 12, 2001, at 66 Fed. Reg. 3381. On February 15, 2001, FAA granted HAI's request for additional time to comment. *See 66 Fed. Reg. 10360 (Feb 15, 2001)*. The new comment deadline is March 29, 2001. HAI gratefully acknowledges FAA's extension of the comment period to permit thorough comparison of the NPRM with the current rule.

HAI is the professional trade association for the civil helicopter industry. Its 1,500-plus member organizations and 1,400-plus individual members operate more than 5,000 helicopters approximately 2 million hours each year. HAI is dedicated to the promotion of the helicopter as a safe, efficient method of commerce and to the advancement of the civil helicopter industry.

ARSA represents entities certificated under Part 145 of the Federal Aviation Regulations (FARs) and under similar regulations issued by National Aviation Authorities (NAAs) around the world. The Association membership includes entities that distribute parts to international civil aviation businesses, as well as air carriers and manufacturers.

Comment on Matters Raised in the NPRM

HAI and ARSA agree with FAA that the primary focus of an airworthiness directive (AD) should be the unsafe condition at issue. Removing the three boilerplate provisions identified in the NPRM from ADs and placing them in the regulation that authorizes ADs, 14 CFR part 39, helps refine this focus. To avoid potential confusion that may be caused by this change, HAI and ARSA suggest that the revised AD format should provide for a notation in each AD referring users to part 39. Such a notation would be especially helpful for owner-operators who may not be very familiar with FAA documents.

HAI and ARSA welcome FAA's explicit authorization, in proposed sections 39.17 and 39.19, of alternate means of compliance. However, HAI and ARSA share the concern, raised by the Aircraft Suppliers Association (ASA) and the Aircraft Electronics Association (AEA) in their joint comment of February 12,

2001, that proposed section 39.19 may be interpreted as a suggestion that proprietary information may be made available to the public. We recognize that the language of proposed section 39.19 is open to other interpretations; we believe that this apparent ambiguity should be corrected. A correction might be achieved by adding to the end of proposed section 39.19 the following two sentences: "FAA generally cannot disclose proprietary information concernin g alternate means of compliance. When proprietary information is important to accomplishing an authorized alternate means of compliance, FAA will: confirm the existence of the authorized alternate means of compliance, identify the entity that has been authorized to comply in the alternate manner, disclose non-proprietary information concerning the alternate means of compliance, and provide a contact point at the entity that has been authorized to implement the alternate means of compliance."

HAI and ARSA also share the concerns, stated by ASA and AEA in their earlier joint comment, that:

- Revised Part 39 should state the standard against which FAA will review proposed alternate means of compliance. HAI and ARSA believe that ASA and AEA have identified the correct standard to be applied: Whether the proposed alternate means of compliance will provide a level of safety at least equivalent to the that achieved by implementation of the means specified in the AD under consideration.

- Revised Part 39 should not preclude approval of alternate means of compliance by application of regulations outside part 39 that have heretofore been recognized by FAA, such as by application of 14 CFR §§ 43.13(c) or 21.305(d). HAI and ARSA believe that FAA does not intend to preclude authorization of alternate means of compliance by application of these sections of the regulations. If FAA does intend such preclusion, we note that such a change in the interpretation and application of these regulations has not been disclosed in this NPRM, and no analysis of, or justification for, such a change has been provided.

- The phrase "aircraft products, that is," should be deleted from proposed section 39.3 for the reasons stated by ASA and AEA.

- The phrase "FAA manager identified in the directive" should be changed to "FAA principal point of contact identified in the directive", in recognition of that fact that FAA sometimes identifies non-managers in this role.

- The question and answer format compromises the utility of the regula tions for professional readers, although we recognize that this format may have a certain appeal for a lay reader. HAI and ARSA share the belief that the better place to implement a question and answer format would be in the body of each AD, rather than in the enabling regulation. The professional community and the public would be better served if the regulations were written in the customary professional manner, with topical section headings stated as phrases or as simple declarative sentences. For the same reason, we agree with ASA, AEA and others that the use of personal pronouns in proposed Part 39 is objectionable for its unfamiliarity and inconsistency with the balance of the regulations and is no more clear than traditional references to identify interested parties. We respectfully ask FAA to return to the customary rules of draftsmanship in revised Part 39.

Comment on Matters That Might Be Addressed in the Regulation

Recently, HAI and FAA personnel became aware of an interpretation of FAA's authority concerning emergency ADs that we believe may have a negative impact on aviation safety. We believe that a clarifying interpretation of existing regulations would resolve this concern, but if we are mistaken in this, we suggest that the proposed revision of Part 39 may offer a vehicle to accomplish whatever regulatory changes may be necessary.

In brief, late last year, a manufacturer discovered cracks in a helicopter main rotor mast. As you know, failure of a helicopter main rotor mast in flight would constitute a catastrophic event. Acting in the interest of aviation safety on the basis of incomplete information, the manufacturer immediately issued an alert service bulletin which the FAA Rotorcraft Directorate immediately appended to and issued, without prior public comment, as an emergency AD. The emergency actions mandated in these documents included frequent disassembly and complex inspections of the affected parts and were quite burdensome and expensive to carry out. Nevertheless, the rotorcraft community welcomed both the manufacturer's alert service bulletin and the FAA's emergency AD, recognizing the need to act in the absence of complete information in these circumstances.

Shortly after these emergency documents had been issued, the manufacturer succeeded in tracing the observed cracks to an unauthorized change in a metallurgical process by one of the manufacturer's suppliers. The unauthorized change was documented to have affected fewer than twenty rotor masts worldwide, and several of these were found in the possession of the manufacturer. The FAA reviewed the manufacturer's research and agreed that only about 15 aircraft need be subjected to the burdensome requirements of the emergency alert service bulletin and AD. However, FAA personnel outside the Rotorcraft Directorate stated that FAA's AD Handbook appears not to permit expeditious alleviation of emergency AD requirements under these circumstances.

Both FAA and industry found themselves in a quandary: A very burdensome AD had been implemented on an emergency basis and now, having been determined no longer to be necessary in that scope, could not be alleviated in a timely manner. Extension of the emergency inspection interval proved an adequate work-around in this situation, but we believe that a significant shortcoming in FAA's AD process has been exposed. Moreover, we believe that this shortcoming in the AD process has significant safety implications, as well as obvious economic consequences.

Safety Implications

When a catastrophic failure potential is identified, the interest of aviation safety is best served when all parties act quickly to prevent disaster. Often, as in the recent rotor mast case, actions must be initiated on the basis of incomplete information. If it is known at that point that, should the contemplated action later prove too broad or unnecessarily burdensome FAA may be unable to adjust it quickly, some participants in the process may be discouraged from taking the immediate steps necessary to save lives. The interpretation applied in the rotor mast case increases incentives within both industry and FAA to base emergency AD decisions on more complete data, encouraging delay. In potentially catastrophic situations, delay erodes safety.

Economic Implications

Several pertinent federal statutes and Executive Orders direct agencies to structure their rulemaking efforts to avoid imposing undue economic burdens on the public. *See, e.g., Regulatory Flexibility Act of*

1980, 5 USC §§ 601-612; Title II of the Unfunded Mandates Reform Act of 1995, 2 USC §§ 1501-1571; Executive Order 12866. The interpretation of FAA's AD authority advanced in the rotor mast case is peculiar in that, in instances like this, FAA will have determined with greater certainty than usual that the burden of the AD is entirely unnecessary to some degree. To delay alleviation of unnecessary burdens constitutes undue burden on the public and arguably runs counter to the spirit, if not the letter, of the aforementioned statutes and Executive Order.

HAI and ARSA believe that FAA's authority to issue ADs in emergency circumstances without benefit of prior public comment serves a vital public interest in aviation safety. However, the fact that emergency ADs are issued without prior public comment gives these ADs a special character as rulemaking actions. We believe it is entirely appropriate, even necessary, for FAA to recognize its corresponding authority to alleviate the burdens of emergency ADs on an expedited basis consistent with the expedited manner in which emergency ADS are issued. We urge FAA to issue a clarifying interpretation of its existing emergency AD regulatory authority or, if that proves unfeasible, to use the current Part 39 NPRM to issue necessary clarifying regulatory changes.

Sincerely,

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